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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

**ARIZONA CORPORATION COMMISSION**

DATE: December 7, 2005

DOCKET NO: W-01854A-05-0543

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

LYN LEE WATER COMPANY, INC.

(CC&N/EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 16, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 24 AND 25, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 LYN LEE WATER COMPANY, INC. FOR AN
10 EXTENSION OF ITS CERTIFICATE OF
11 CONVENIENCE AND NECESSITY.

DOCKET NO. W-01854A-05-0543

DECISION NO. _____

12 **OPINION AND ORDER**

13 DATE OF HEARING:

November 22, 2005

14 PLACE OF HEARING:

Tucson, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

16 APPEARANCES:

Ms. Margaret (Layne) Boring, on behalf
of Lyn Lee Water Company, Inc.; and

Ms. Diane Targovnik, Staff Attorney,
Legal Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

17 **BY THE COMMISSION:**

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On July 28, 2005, Lyn Lee Water Company, Inc. ("Lyn Lee" or "Company") filed an
23 Application for an extension of its Certificate of Convenience and Necessity ("Certificate" or
24 "CC&N") to provide water service in a portion of Pima County, Arizona.

25 2. By Procedural Order dated September 16, 2005 the Application was deemed sufficient
26 pursuant to A.R.S. § 40-1074(C) and the matter was set for hearing on November 22, 2005, in
27 Tucson, Arizona.

28 3. On November 1, 2005, Commission Utilities Division Staff ("Staff") filed its Staff

1 Report recommending approval with conditions.

2 4. As required by the September 16, 2005, Procedural Order, Lyn Lee mailed notice of
3 the hearing to its customers and the property owners located in the extension area. On October 4,
4 2005, the Company docketed notice that it had mailed the notice as required.

5 5. The hearing convened as scheduled on November 22, 2005, at the Commission's
6 Tucson offices. Ms. Layne Boring, Lyn Lee's owner, testified for the Company. Ms. Linda Jaress
7 testified for Staff.

8 6. Lyn Lee serves approximately 42 customers and is located three miles west of I-10 on
9 the Trico-Marana Road near the town of Marana in Pima County. Lyn Lee received approval of its
10 CC&N in Decision No. 43934 (February 5, 1974).

11 7. Ms. Boring, the owner, recently discovered that approximately 30 of her customers are
12 located outside of the Company's certificated area. Upon learning of the situation, Ms. Boring filed
13 the current application to add one-half of one square mile to the Company's certificated service area.
14 Ms. Boring testified that the original CC&N should have included all of the customers, but for some
15 reason the area that is the subject of this application was left out of the original CC&N application.

16 8. Lyn Lee's system is comprised of two wells with a maximum total production
17 capacity of 230 gal/min, one 5,000 gallon pressure tank, and distribution system serving 42
18 connections. Staff concludes that the Company has adequate capacity to serve its existing customer
19 base.

20 9. The Arizona Department of Environmental Quality ("ADEQ") reports that the Lyn
21 Lee system has major deficiencies with regard to its Monitoring and Reporting Status for failing to
22 file water testing for lead and copper for several months. Consequently, ADEQ could not determine
23 if this system is currently delivering water that meets water quality standards required by the Arizona
24 Administrative Code, Title 18, Chapter 4.

25 10. Staff recommends that Lyn Lee file documents demonstrating compliance with
26 ADEQ's monitoring and reporting requirements and that indicate it is delivering water that meets
27 water quality standards within 180 days of the effective date of the order in this proceeding. Because
28 Staff is concerned about Lyn Lee's lack of compliance with regulations that promote safe and

1 healthful water, Staff requests pre-authorization to file an Order to Show Cause why sanctions should
2 not be imposed on Lyn Lee if Lyn Lee does not provide the compliance documents within the stated
3 timeframe.

4 11. At the hearing, Ms. Boring testified that she had believed ADEQ's MAP program was
5 testing for lead and copper. She states that she has already had the lead and copper tests performed,
6 and that results would be available within weeks.

7 12. The data on arsenic concentration in the Lyn Lee water system shows compliance with
8 the new arsenic standard of 10 micrograms per liter that becomes effective January 23, 2006.

9 13. Lyn Lee is within the Tucson Active Management Area ("Tucson AMA"). Because
10 the Company supplies less than 250 acre-feet of water per year for non-irrigation use, it is considered
11 a "small provider" and is not subject to the gallons per capita per day limit or to conservation rules,
12 and is only required to monitor and report water use. ADWR indicated that Lyn Lee is in compliance
13 with its monitoring and reporting requirements.

14 14. The Utilities Division Compliance Section reports no outstanding compliance issues
15 with this Company.

16 15. In its Staff Report, Staff states that a Curtailment Plan Tariff is an effective tool for a
17 water company to use to manage its resources during periods of shortages. Staff reports that the
18 Company does not have this type of tariff, and thus recommended that the Company file a
19 Curtailment Plan Tariff in a form provided by Staff, within 45 days of the effective date of this Order
20 for review and certification by Staff.

21 16. During the hearing Ms. Boring testified that she had already filed such tariff.

22 17. Staff also reports that the Company's well meter was inoperative and it could not
23 provide the quantity of water pumped during 2004. The Company has been estimating well
24 production based on pump run time which is not very accurate. The water system is within the
25 Tucson AMA and must monitor and report flows. In addition, the Company should be able to
26 accurately measure water pumped versus water sold in order to track leaks and other unbilled water.

27 18. Staff recommends that within six months of the date of an Order in this proceeding,
28 that the Company repair or replace the well meter and file evidence with Docket Control that the

1 required work has been completed.

2 19. Ms. Boring testified at the hearing that she has ordered a replacement well meter.

3 20. Staff further noted that the Company does not have a franchise from Pima County.

4 21. Staff recommends that the Company be required to file a copy of its franchise
5 agreement with the appropriate governmental entity in Docket Control within 365 days of the
6 Decision in this matter.

7 22. In the Application Lyn Lee requested that the south half of section 19 be included
8 within the Company's service area. According to Ms. Boring there are no pending requests for
9 service within the proposed extension area. The 30 customers being served are located in only the
10 southwest quarter of section 19. Consequently, Staff recommends that the approved extension area
11 only include the southwest quarter of section 19, as set forth in Exhibit A hereto, rather than the full
12 half-section.

13 23. The Company agrees that Staff's recommendation concerning the legal description of
14 the extension area is appropriate.

15 24. Staff recommends that if the Company has not complied with the recommendations to
16 file the Curtailment Plan Tariff, replace the well meter and file the franchise within the recommended
17 timeframes, that after due process, the Decision approving the extension be null and void.

18 25. Staff further recommends that Lyn Lee charge its approved rates and charges within
19 the extension area.

20 CONCLUSIONS OF LAW

21 1. Lyn Lee is a public service corporation within the meaning of Article XV of the
22 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

23 2. The Commission has jurisdiction over Lyn Lee and the subject matter of the
24 application.

25 3. Notice of the application was provided in accordance with law.

26 4. There is a public need and necessity for water service in the proposed extension area
27 set forth in Exhibit A.

28

5. As conditioned herein, Lyn Lee is a fit and proper entity to receive a CC&N to provide water service in the proposed extension area.

6. Staff's recommendations contained in Findings of Fact Nos. 10, 15, 18, 21, 24 and 25 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Lyn Lee Water Company, Inc. for an extension of its Certificate of Convenience and Necessity to provide water service to the area in Pima County, Arizona, described in Exhibit A hereto, is approved.

IT IS FURTHER ORDERED that Lyn Lee Water Co., Inc. shall charge its existing rates and charges within the approved extension area.

IT IS FURTHER ORDERED that Lyn Lee Water Company, Inc. shall file documents demonstrating compliance with ADEQ's monitoring and reporting requirements and that it is delivering water that meets water quality standards within 180 days of the effective date of this Order.

IT IS FURTHER ORDERED that Staff may file an Order to Show Cause why sanctions should not be imposed on Lyn Lee Water Company, Inc. if it does not provide the compliance documents from ADEQ within the stated timeframe.

IT IS FURTHER ORDERED that within 180 days of the effective date of this Order, Lyn Lee Water Company, Inc. shall file documentation with Docket Control, as a compliance item, that it has repaired or replaced the well meter.

IT IS FURTHER ORDERED that Lyn Lee Water Company, Inc. shall file with Docket Control, as a compliance item, a copy of its franchise agreement with the appropriate governmental entity within 365 days of the effective date of this Decision.

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1 IT IS FURTHER ORDERED that failure to meet the deadlines for filing the Curtailment plan
 2 Tariff, replacing the well meter and filing the county franchise specified herein, shall, after due
 3 process, cause the grant of the Certificate of Convenience and Necessity for the extension area to be
 4 considered null and void.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
 8
 9 CHAIRMAN

COMMISSIONER

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 11
 12
 13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
 15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 16 Director of the Arizona Corporation Commission, have
 17 hereunto set my hand and caused the official seal of the
 18 Commission to be affixed at the Capitol, in the City of Phoenix,
 19 this ____ day of _____, 2006.

20 BRIAN C. McNEIL
 21 EXECUTIVE DIRECTOR

22 DISSENT _____

23
 24 DISSENT _____

25 JR:mj
 26
 27
 28

SERVICE LIST FOR:

LYN LEE WATER COMPANY, INC.

DOCKET NO.:

W-01854A-05-0543

Margaret E. Boring
Lyn Lee Water Co.
2321 W. Catalpa
Tucson, Arizona 85742-9444

Mr. Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

EXHIBIT A

The Southwest Quarter of Section 19, Township 11 South, Range 11 East GSRB&M, Pima County,
Arizona.